

Appln. No.: 09/474,326
Amdt. Dated June 21, 2004
Reply to Office Action dated March 26, 2004

Remarks/Arguments

Claims 1-8 are currently pending in the application. No amendments to the claims have been made in the instant response.

Claims 1-8 stand rejected under 35 U.S.C. 102(e) as being anticipated by Simmons (U.S. PG Pub. No. 2001/0036959 A1). This rejection is traversed.


Applicants submit that Simmons is not effective as prior art. The instant application has a filing date of December 29, 1999. Simmons has a U.S. filing date of February 20, 2001, and is a continuation of an International Application (PCT/US99/19108) which has a filing date of August 19, 1999. For purposes of 102(e)(1), the appropriate date of the Simmons reference is the filing date (2/20/01) of the U.S. application which is after the filing date of the instant application. Accordingly, the rejection under 35 U.S.C. 102(e) is improper. The Examiner is referred to MPEP (Rev. 1, Feb. 2003) Section 706.02(f)(1), pages 700-36 and 700-37.

In view of the above, Applicants request that the instant rejection be withdrawn. The Examiner is also reminded that Applicants previously appealed this case and the Examiner withdrew all of the rejections subsequent to the filing of an Appeal Brief and issued the instant Office Action. Since this Office Action is also deficient, it would be manifestly unfair for the Examiner to perform additional searching since the Examiner has had the opportunity to search the same subject matter on four previous occasions. This continued extended prosecution each time the Applicants overcome the rejections of record is contrary to the PTO policy of expedited prosecution.

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It is submitted that the application is in condition for allowance. Reconsideration of the rejection is respectfully requested and an early notice of allowance earnestly solicited.

Respectfully submitted,


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